
LEGAL DUE TO CANCELLATION OF DEED BONDING THE LAND BUYING

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Abstract

The importance of land for human life, because human life can not be separated from the ground. Land issues can lead to disputes, among others, stemming from the binding sale and purchase of land. The binding agreement for the sale and purchase of land, in everyday practice, is carried out by the community at the notary's office. This agreement is an agreement that precedes the sale and purchase agreement of the land, which must be made before the Land Deed Maker Official. The problem; 1. How is the implementation of the binding sale and purchase of land according to Law Number 5 of 1960 concerning the Basic Agrarian Law? 2. What are the legal consequences of the cancellation of the binding deed of sale and purchase of land. The discussion is carried out through a normative research study. The binding is intended as a preliminary agreement from the main intention of the parties to transfer land rights. This sale and purchase agreement contains promises to buy and sell land if the requirements needed for it have been met, and is a form of agreement that arises from legal needs that develop in society. The binding sale and purchase of land is an anonymous agreement, because it is not found in the forms of agreements regulated in the Civil Code. The binding agreement for the sale and purchase of land is an implementation of the principle of freedom of contract, where the parties can freely determine their will. The binding sale and purchase is a form of agreement that arises from the legal needs that develop in society. An agreement can not always run according to the agreement desired by the parties, including the binding agreement for the sale and purchase of land which can be canceled by the parties or even by one of the parties, or also canceled by the court. For these legal actions, there will be legal consequences that must be obeyed by the parties.

Keyword : Cancellation of Land Sale and Purchase Binding Dee

INTRODUCTION

The importance of the meaning of land for human life is because human life cannot be separated from the soil at all (Parlindungan, 1973). They live on land and obtain food by utilizing the land. Humans will live happily and self-sufficiently if they can use the land they control/own in accordance with applicable natural laws. Land rights are rights that authorize the holder to use and/or take advantage of the land they are entitled to. Based on the provisions of Article 4 paragraph (2) Number 5 of 1960 concerning Agrarian Principles (abbreviated UUPA), the holders of land rights are given the authority to use the land concerned, as well as the body of the earth and water and the space above it is only needed for direct interests related to with the use of the land, within the limits according to the LoGA and other higher legal regulations (Azhary, 1994).

The binding agreement for the sale and purchase of land is often found in daily practice in the community and in the notary's office (Maggalatung, 2015). This agreement is an agreement that precedes the sale and purchase agreement of the land, which must be carried out before the PPAT (Land Deed Making Officer). Based on Article 37 paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration, it is stated that for the transfer of land rights an authentic deed is required which is made by a public official called the Land Deed Making Officer (PPAT) who is appointed by the government". Thus,

the transfer of land rights cannot be carried out without fulfilling the requirements set by the applicable laws and regulations (Nasichin & Agustina, 2021). In practice, before the sale and purchase of land is carried out before the PPAT, the parties first carry out a legal action by making a binding deed of buying and selling land before a notary.

The binding is intended as a preliminary agreement from the main intention of the parties to transfer land rights. This sale and purchase agreement contains promises to make a sale and purchase of land if the necessary conditions for it have been met. An agreement is a legal act that appears to accommodate certain interests of community members.

Article 1338 paragraph (1) of the Civil Code states that all agreements made legally apply as law for those who make them. The binding sale and purchase is a form of agreement that arises from the legal needs that develop in society. The binding sale and purchase of land is an anonymous agreement because it is not found in the forms of agreements regulated in the Civil Code. The binding agreement for the sale and purchase of land is an implementation of the principle of freedom of contract, where the parties can freely determine their will.

In practice, before the sale and purchase of land is carried out before the authorized PPAT, the parties first carry out a legal action by making a binding deed of sale and purchase of land before a Notary. Land sale and purchase binding agreements in practice are often made in the form of an authentic deed made before a Notary, so the Sale and Purchase Binding Deed is an authentic deed that has perfect evidentiary power. This is intended by the parties to provide more protection and legal certainty for the parties who make it, in order to maintain the interests of the parties objectively.

However, an agreement does not always run according to the agreement desired by the parties. In practice, it is possible for a sale and purchase binding agreement to be canceled unilaterally by one of the parties or upon the agreement of both parties. The problem in this paper; 1. How is the implementation of the binding sale and purchase of land according to Law Number 5 of 1960 concerning the Basic Agrarian Law? 2. What are the legal consequences for the cancellation of the binding sale and purchase of land.

METHOD RESEARCH

In this study, the research method used is a qualitative method with a descriptive approach because it is to present an overview of the relationship between the variables studied. According to Bogdan and Taylor Moleong, that qualitative methodology is a research procedure that produces descriptive data in the form of written or spoken words from people and observable behavior. According to them, this approach is directed at the background and the individual holistically (whole). Descriptive research according to Sugiyono is a descriptive research method. This is done to find out the existence of independent variables, either only on one variable or more (stand-alone variable or independent variable) without making comparisons of the variables themselves and looking for relationships with other variables.

Data Collection Technique

The data collection technique was carried out using the triangulation method. Triangulation in testing credibility as checking data from various sources, methods, and time. According to Sugiyono (2008: 274) triangulation is divided into three, including the following:

1. Triangulation of sources, testing the credibility of the data is done by checking the data that has been obtained through various sources.
2. Triangulation technique, testing the credibility of the data is done by checking the data to the same source with different techniques.
3. Time triangulation, testing the credibility of the data is done by collecting data at

different times.

In this study, the authors used the theory of triangulation with three approaches, including:

1. Interviews, namely conducting interviews with related parties:
 - a. Dean of the Faculty of Islamic Studies (FAI) Uninus, Dean of the Faculty of Tarbiyah and Teacher Training Unisba.
 - b. Head of the PAI Study Program, Faculty of Islamic Religion (FAI) Uninus, Head of the PAI Study Program, Faculty of Tarbiyah and Teacher Training, Unisba
 - c. Head of Uninus Islamic Banking Study Program.
 - d. Secretary of the PAI Study Program, Faculty of Islamic Religion, Uninus.
 - e. Lecturer at the Faculty of Islamic Studies, Uninus, lecturer at the Faculty of Tarbiyah and Teacher Training, Unisba.
 - f. Uninus Faculty of Islamic Studies students and Unisba Tarbiyah and Teacher Training Faculty students.
2. Documents, researchers collect various documents related to activities in an effort to instill values to form social piety, both documents in the Uninus graduate school foundation, faculties, study programs and others.
3. Observation, namely observing the behavior of all elements of the campus institution studied. The aspects studied are as follows:
 - a. Classroom with lecture activities
 - b. Campus hall during religious activities
 - c. Places of worship (mosques and prayer rooms)
 - d. Various rides (student activity center)

Before the research was carried out, an ethical test was carried out by the Ethics Committee of the Poltekkes of the Ministry of Health, Maluku ([Huijbers, 1993](#)). Data analysis included univariate analysis (age, education, occupation, delivery history, breastfeeding self-efficacy and mother's breastfeeding behavior); bivariate analysis using Chysquare to determine the effect of BSE on breastfeeding behavior of mothers ([Soerjopratiknjo, 1982](#)).

RESULT AND DISCUSSION

A. Land Sale and Purchase Binding Agreement

A sale and purchase agreement is an engagement born of a contract or agreement. Therefore, the binding sale and purchase can be classified as an anonymous agreement that appears as a form of legal need from the community ([Rashid, 1987](#)). In principle, every legal subject can agree as long as it does not conflict with the applicable laws and regulations ([Marpaung, 2018](#)).

According to R. Subekti, an agreement is an event where one person promises to another person or where two people promise each other to carry out something ([Satrio, 1995](#)). The meaning of agreement in Article 1313 of the Civil Code is stated as follows: An agreement is an act by which one or more persons bind themselves to one or more persons. Meanwhile, according to Wirjono Prodjodikoro, an agreement is defined as a legal relationship regarding property between the two parties, in which one party has the right to demand the implementation of the promise.

In the existence of an agreement, there are several elements, namely:

1. There are at least two parties
2. There is an agreement between the parties
3. There is a goal to be achieved
4. There are achievements to be achieved

Based on these elements, the important agreement principles include; The principle of freedom of contract (Noor, 2015). The point is that everyone is free to agree in any form, whether in form, content, and to whom the agreement is intended, as long as it does not conflict with the legal terms of the agreement or agreement regulated under Article 1320 of the Civil Code. The principle of consensuality is an agreement is enough to have an agreement from those who agree without being followed by other legal actions except for a formal agreement (Yoga et al., 2022). The principle of good faith is that the person who will agree must be done in good faith. The principle of Pacta Sun Servanda, the principle in the agreement related to the binding of an agreement. Agreements made legally by the parties bind those who make them and the agreement applies like a law, as well as the principle of the validity of an agreement, that all agreements apply to those who make it have no effect on third parties except those regulated by law.

B. Land Transaction

Furthermore, regarding the meaning of buying and selling land, it is essentially a transfer of land rights to other parties/people in the form of the seller to the buyer of the land. In the sense of customary law, "selling and buying" land is a legal act, in which the seller surrenders the land he sells to the buyer forever when the buyer pays the price (even if only partially) of the land to the seller. Since then, land rights have passed from the seller to the buyer.

According to the Civil Code system, the sale and purchase of land rights are carried out by making a deed of sale and purchase agreement of rights before a notary, where each party promises to each other to perform an achievement with regard to the land rights which are the object of the sale and purchase, namely the seller to sell and deliver land to the buyer and the buyer buys and pays the price. The sale and purchase agreement adopted by the Civil Code is obligatory because the agreement has not transferred ownership rights. The new ownership rights are transferred by leveraging or handover.

While the definition of buying and selling land as stated in Article 145 of the Civil Code states that the sale and purchase of land is an agreement in which the seller binds himself (meaning a promise) to hand over the rights to the land in question to the buyer and the buyer binds himself to pay the seller the agreed price.

C. Legal Protection for the Parties in the Implementation of the Sale and Purchase Binding Agreement

1. Implementation of the Sale and Purchase Binding Agreement

The Sale and Purchase Binding Agreement is made in an authentic deed made by and before a Notary, so that the Sale and Purchase Binding Deed is an authentic deed that has perfect evidentiary power (Wahyuni et al., 2021). This provides more protection and legal certainty for the parties who make it. Because the notary in making a deed is impartial and maintains the interests of the parties objectively. With the help of a notary, the parties who make the sale and purchase binding agreement will get assistance in formulating the things that will be agreed upon.

The authenticity of the notary deed comes from Article 1 paragraph (1) of Law no. 30 of 2004 concerning the Position of a Notary, as amended by Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of a Notary, it is stated that a notary is made a public official so that the deed made by a notary in his position obtains the position and status of a notary. properties as an authentic deed.

The deed made by a notary has an authentic nature, not because the law applies so, but because the deed was made by or before a public official (Hendra, 2012). This is as referred to in Article 1868 of the Civil Code which states: An authentic deed is a deed

which, in the form determined by law, is made by or before public officials who have power for that at the place where the deed was made. This deed is also called a deed made before (ten overstaan) a notary. In all these deeds the notary explains or gives in his position as a public official testimony of all what he has seen, witnessed and experienced, which was done by other parties. In the category of deed referred to in sub 2, it includes deeds containing grant agreements, buying and selling and binding sale and purchase (not including sales in public or auctions), final ability (will), power of attorney, and so on.

With the binding of the sale and purchase of land as outlined in the Notary Deed made by complying with the provisions of Article 1868 of the Civil Code, all contents as outlined in the authentic deed become legally binding for the parties (Muljono, 2013). The Sale and Purchase Binding Agreement made in a notarial deed provides legal protection for the parties who make it remember that the authentic deed is the perfect evidence. In addition to this, the agreement made legally by the parties is binding on those who made it and the agreement applies like a law. In general, the implementation of the binding sale and purchase of land to be carried out before a notary by a notary requires the following things :

- a. The Seller and Buyer are present before a Notary and sign a binding agreement for the sale and purchase of land;
- b. The Parties submit:
 - 1) Land Certificate if you already have a certificate
 - 2) Land Certificate for those who are not certified
 - 3) Photocopy of KTP of Seller and Buyer
 - 4) Land SPPT
 - 5) Land Certificate Not in Dispute
 - 6) PBB Payment Proof
 - 7) Certificate of Inheritance and Death issued by the subdistrict if there are heirs, and
 - 8) Power of attorney and ID card of the recipient of the power of attorney if authorized.

The contents of the Sale and Purchase Binding Agreement can be described, among others, as follows:

- a. The seller promises and binds himself to sell to the buyer who promises and binds himself to buy from the seller a certain plot of land.
- b. The seller acknowledges that the money for the sale of land and buildings to be sold by the seller to the buyer is the amount that has been agreed upon and has been paid by the buyer to the seller at the time of signing the deed and the deed of binding sale and purchase is also valid as a sign of receipt or a valid receipt. , without reducing the issuance of separate/special receipts.
- c. If the buyer is unable to fulfill his obligations within the specified time period, which negligence has occurred and is proven by the passage of time, the buyer is subject to a fine of the agreed amount of amount to be paid by the buyer to the seller, for each day of delay. The fine must be paid immediately and all at once (Hadjon, 1987).
- d. If within a period of 3 (three) consecutive months after the expiration of the time mentioned above, the Buying Party is unable to fulfill its obligations, then this Agreement ends, and as long as it is necessary both parties break away from what is stipulated in Article 1266 of the Civil Code and Article 1267 Civil Code, and the Seller is obliged to return the money that has been paid by the Buyer after deducting a few percent of the selling price of the land and buildings as a substitute for the costs that have been incurred by the Seller plus a fine that must be paid by

the Buyer to the Seller. And so on according to the wishes of the parties which are then agreed upon and/or approved before and set forth in a deed made by a Notary.

2. Legal Consequences of Cancellation of Binding Sale and Purchase of Land

Legal action has been carried out legally, but sometimes there is a denial of the legal action, causing dispute behavior between the parties who made it, there are certain conditions that result in an agreement having to end not following the initial agreement, not to mention the cancellation of the Land Sale and Purchase Binding Agreement. which has been stated based on the Notary Deed.

As for the legal consequences for parties or between parties who cancel unilaterally, then the legal consequences are being responsible based on what has been the basis of the agreement that has been made and or carried out before a Notary, which is then stated in the Notary Deed. As for the legal consequences of the cancellation of the legal action, among others;

- a. The parties or between parties may be subject to a fine of the agreed amount of the amount that the buyer has to pay to the seller or the buyer, for each day of delay. The fine must be paid immediately and at once.
- b. The agreement ends as long as both parties must break away from what is stipulated in Article 1266 and Article 1267 of the Civil Code, and the Selling Party is obliged to return the money that has been paid by the Buying Party after being deducted by several percent of the selling price of the land. and the building as a substitute for the costs that have been incurred by the Seller Party plus a fine that must be paid by the Buyer Party to the Seller. Refunds by the Seller Party to the Buyer are carried out no later than a certain period that has been agreed upon.

If the legal consequences do not occur according to the agreement stated in the notarial deed, then there is an opportunity to resolve the dispute through mediation and the judiciary.

CONCLUSION

Legal action has been carried out legally, but sometimes there is a denial of the legal action, causing dispute behavior between the parties who made it, there are certain conditions that result in an agreement having to end not following the initial agreement, not to mention the cancellation of the Land Sale and Purchase Binding Agreement. which has been stated based on the Notary Deed.

As for the legal consequences for parties or between parties who cancel unilaterally, then the legal consequences are being responsible based on what has been the basis of the agreement that has been made and or carried out before a Notary, which is then stated in the Notary Deed.

As for the legal consequences of canceling the legal action, namely the parties or between parties may be subject to a fine of the amount agreed by the buyer to be paid to the seller or buyer, for each day of delay. . Fines must be immediately and simultaneously paid and the agreement ends as long as both parties must release themselves from what is stipulated in Article 1266 and Article 1267 of the Civil Code, and the seller is obliged to return the money paid by the buyer after deducting a few percent of the selling price of the land. and buildings as a substitute for costs incurred by the Seller Party plus fines to be paid by the Buyer Party to the Seller. Refunds by the Seller to the Buyer are made no later than within a certain agreed period.

If the legal consequences do not occur in accordance with the agreement set forth in the notarial deed, then there is an opportunity to resolve the dispute through mediation and court.

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